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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

MAY 11 9 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In re)
)
GERARD A. TURRO) MM Docket No. 97-122
)
For Renewal of License) File Nos. BRFT-970129YC
for FM Translator Stations) BRFT-970129YD
)
)
W276AQ(FM), Fort Lee, NJ, and)
W232AL(FM), Pomona, NY)
)
MONTICELLO MOUNTAINTOP)
BROADCASTING, INC.)
)
Order to Show Cause Why the Construction)
Permit for FM Radio Station WJUX(FM),)
Monticello, NY, Should Not Be Revoked)

To: Administrative Law Judge
Arthur I. Steinberg

MASS MEDIA BUREAU'S OPPOSITION TO MOTION TO ENLARGE ISSUES

1. On May 8, 1997, Universal Broadcasting of New York, Inc. ("Universal") filed a Motion to Enlarge Issues against Gerard A. Turro ("Turro") to add the following issue:

To determine whether Turro intentionally violated Section 1.1208 and 1.1210 of the Commission's ex parte rules by soliciting a third party to call and/or write the Commission on Turro's behalf to discuss the merits of Turro's renewal application proceedings and whether Turro, in addition to denial of renewal of license, may be liable for a forfeiture of up to the maximum statutory amount.

In response, the Mass Media Bureau submits the following comments.

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2. Universal states that pursuant to Section 1.1208 of the Commission's Rules this proceeding is a restricted proceeding for purposes of the ex parte rules. According to Universal, all ex parte presentations to decision makers concerning the issues in this proceeding are prohibited. Universal further contends that it has reason to believe that on or about April 25, 1997, United States Senator Robert B. Torricelli (D-NJ) sent a letter to the Commission discussing the merits of the matters raised in this proceeding. In addition, Universal alleges that on April 27, 1997, Senator Torricelli, United States Representative Steve Rothman (D-NJ), and Bergen County Executive William "Pat" Schuber participated in a fifteen minute call-in program on WJUX and Turro's FM translators that originated from Turro's Dumont, New Jersey, studio. Universal states that it was able to record the last few minutes of the program and it has attached an alleged transcript of the relevant portions of the program to its motion. Universal has also provided a copy of a newspaper article concerning this broadcast.

3. Universal argues that Turro's involvement in these alleged ex parte presentations by third parties constitutes "improper interference" with these proceedings because the presentations were made during the course of a program that was produced, controlled, and distributed by Turro and broadcast and/or allegedly rebroadcast, over facilities controlled by or licensed by Turro. Therefore, Universal requests that its motion for enlargement of issues be granted, citing Rainbow Broadcasting Company (FCC 97D-05), released April 2, 1996 (Initial Decision of ALJ Joseph Chachkin)(Rainbow).

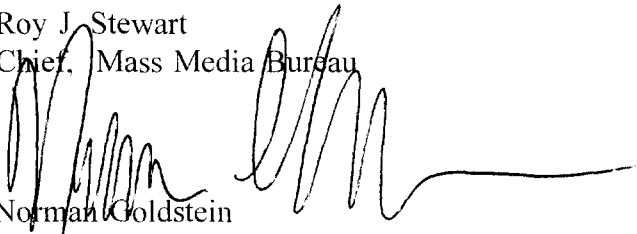
4. Section 1.229 (d) of the Commission's Rules states that Motions to Enlarge Issues must "contain specific allegations of fact sufficient to support the action requested." In addition, the rule requires that the allegations of fact be supported by affidavits of a person or persons having personal knowledge of such facts. Universal's motion contains no supporting affidavit of a person with personal knowledge that Turro solicited third parties to make prohibited presentations in this proceeding. Thus, even assuming arguendo, that impermissible contacts with Commission decision makers were made, in the absence of any firsthand knowledge or other evidentiary support that Turro solicited or otherwise directed such contacts, addition of this issue is unwarranted.¹ Thus, we find that the motion is procedurally deficient and oppose it on that basis. Accordingly, the Bureau opposes the addition of the requested issue.

¹ See also, Artichoke Broadcasting Corporation, 10 FCC Rcd 12631, 12634 (1995); Lutheran Church/Missouri Synod, 10 FCC Rcd 9980, 9991 (Initial Decision of ALJ Arthur I. Steinberg 1995), citing Folkways Broadcasting Company, 33 FCC 2d 806, 811 (Rev. Bd. 1972); West Central Ohio Broadcasters, Inc., 1 FCC 2d 1178 (Rev. Bd. 1965).

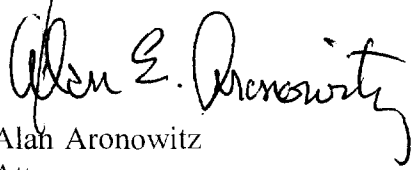
5. For the reasons set forth in the forgoing comments, the Bureau opposes Universal's Motion to Enlarge Issues.

Respectfully submitted,

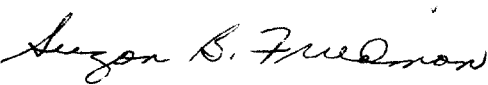
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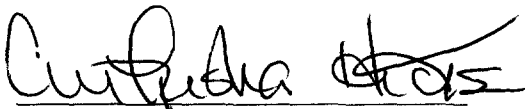
CurTrisha Hicks, a secretary in the Enforcement Division, Mass Media Bureau, certifies that she has on this 19th day of May, 1997, sent by regular U.S. mail, U.S. Government frank, copies of the foregoing "**Mass Media Bureau's Opposition to Motion to Enlarge Issues**" to

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